

REMARKS

The Office Action of January 14, 2008, has been carefully considered.

The specification has been amended to utilize proper subject matter headings, and to add a reference to the prior PCT application.

Claims 1-11 and 14 have been rejected under 35 USC 102(b) as anticipated by Desjonquieres.

The claims of record have now been canceled and replaced by a new set of Claims 27 through 50. Of these claims, Claims 40 through 50 are method claims, which are withdrawn from consideration. While the new claims have been written in proper form for U.S. practice, the scope of the claims is considered to be substantially the same as the original claims.

Claim 27 is directed to an oily pharmaceutical composition comprising peroxidized lipids which have a degree of peroxidation of between 5 and 600 milli-equivalents per kilogram, and silica which is dispersed within the peroxidized lipids, the composition containing silica in a concentration by weight of greater than or equal to 0.5% and less than 4%. The rejection is based on an allegation that Desjonquieres teaches a composition comprising peroxidized safflower oil with a degree of peroxidation of 149 meq/kg, and colloidal silica at a concentration of 1.6% by weight, relative to the weight of the total composition, including the capsule (Example 1, columns 3 and 4).

The rejection thereby misrepresents both the teachings of the invention and the teachings of the Desjonquieres reference. The term "oily composition" as used in the present application refers to a combination of a peroxidized oil with silicon dioxide suspended therein, and optionally a flavoring which makes the composition suitable for oral application.

Similarly, the oily composition which is disclosed in Desjonquieres includes a peroxidized oil, a fragrance and colloidal silica. In this oily composition disclosed by Desjonquieres, the silica is present in an amount of 6.8% by weight, far outside the presently claimed range.

The rejection, however, considers the capsule in which this oily composition is contained to be part of the composition, and under this definition, the silica is present in an amount of 1.6% by weight. The capsule, however, is no more than a container for dispensing the composition of Desjonquieres, and is thus no more a part of the composition of Desjonquieres than a glass bottle with spray top would be for the claimed invention. The envelope of Desjonquieres may be formed by mixing together gelatin, glycerol, water and titanium dioxide, but this mixture is solidified and used to encapsulate the oily mixture containing the peroxidized oil and colloidal silica, and there is no actual mixing between the two compositions. In the final product, the gelatin, glycerol, water and titanium dioxide form a solid capsule, while these peroxidized safflower oil, fragrance and silica form an oily mixture, similar to the oily mixture of the claimed invention, but a mixture which is not suitable for application to the buccal cavity as is the claimed invention.

Indeed, the purpose of the claimed invention is a composition which can be sprayed into the oral cavity. If one assumes that the composition disclosed by Desjonquieres is a unitary composition, as does the Office action, then the product is a collection of solid capsules, which cannot be sprayed in the manner desired in the claimed invention. Those of ordinary skill in the art would not, however, assume that the composition disclosed by Desjonquieres is a unitary composition, but is an encapsulated oil.

Applicant also notes that the Office action agrees with

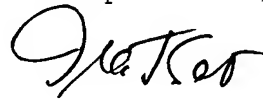
Applicant that FR 2705568 does not anticipate the claimed invention because the concentration of silica specified in Claim 1 is not present. However, if one considers the entirety of this reference, it can be seen that the teaching is essentially the same as that of the Desjonqueres reference, with an oily composition encapsulated in a gelatin capsule. Indeed, the amount of ingredients of the oily composition and the capsule are identical to those used in the Desjonqueres reference. See pages 3 and 4 of FR 2705568.

Withdrawal of this rejection is accordingly requested.

The objection to Claim 11 has been obviated by the cancellation of the previous claims of record.

In view of the foregoing amendments and remarks, Applicant submits that the present application is now in condition for allowance. An early allowance of the application with amended claims is earnestly solicited.

Respectfully submitted,



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